The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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Ex parte MANDAYAM T. RAGHUNATH

Appeal No. 2005-0613
Application No. 09/607,801

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BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before RUGGIERO, BLANKENSHIP, and MACDONALD, ***Administrative Patent Judges***.

MACDONALD, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 3, 7-8, and 10-20. Claims 2, 4-6, and 9 are not on appeal.

Invention

Appellant's invention relates to a system, method, and program storage device for dynamically controlling scrolling functions of a display indicator provided in a wearable appliance that displays textual or graphical content, the appliance implementing a scroll device for generating scroll events in response to user manipulation thereof, the method comprising the steps of: receiving

scroll events for incrementally advancing the indicator per scroll event in a first direction to provide fine-grain scroll indicator movement, and simultaneously tracking the advancing direction; determining a predetermined number of the fine-grain indicator increments in the first direction; and, thereafter, in response to continued receipt of scroll events, providing, in a manner that is seamless to a user, coarse-grain scroll indicator movement by advancing said indicator for a pre-determined number of increments per scroll event in the first direction, the coarse-grain scroll indicator movement greater than the fine-grain scroll indicator movement, whereby fewer scroll device manipulations are required to achieve a desired scroll indicator position on the display. Appellant's specification at page 4, line 20, through page 5, line 5.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. A method for dynamically controlling speed of a scroll device providing scroll functions for setting time of a time keeping display having minute and hour indicators, said scroll device generating scroll signals representing scroll events and communicating said signals to a control device for advancing said minute and hour indicators in response thereto, said method comprising:

a) receiving first scroll signals from said scroll device and, in response to received first scroll signals, incrementally advancing a time keeping display minute indicator in a first direction according to fine-grain time increments, and simultaneously tracking the advancing direction;

b) counting said received first scroll signals; and,

c) thereafter, in response to continued receipt of first scroll signals, seamlessly advancing said time keeping display minute indicator according to coarse-grain time increments in said first direction when a count of said received first scroll signal exceeds a predetermined number, said coarse-grain time increments greater than said fine-grain time increments, whereby fewer scroll device manipulations are required to achieve a desired time set without notice to the user.

References

The reference relied on by the Examiner is as follows:

Will	5,477,508	Dec. 19, 1995

Rejections At Issue

Claims 1, 3, 7, 10-14, and 16-20 stand rejected under 35 U.S.C. § 102 as being anticipated by Will.

Claims 8 and 15 stand rejected under 35 U.S.C. § 103 as being obvious over Will.

Throughout our opinion, we make references to the Appellant's briefs, and to the Examiner's Answer for the respective details thereof.[1]

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellant and the Examiner, for the reasons stated ***infra***, we affirm the Examiner's rejection of claims 1, 3, 7, 10-

[1] Appellant filed an appeal brief on August 14, 2003. The Examiner mailed an Examiner's Answer on September 24, 2003.

14, and 16-20 under 35 U.S.C. § 102, and we affirm the Examiner's rejection of claims 8 and 15 under 35 U.S.C. § 103.

Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant could have made but chose not to make in the brief have not been considered. We deem such arguments to be waived by Appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

Appellant has indicated that for purposes of this appeal, the claims stand or fall together. See page 8 of the brief. We read this as the claims will stand or fall together based on the respective grounds of rejection. Appellant has fully met the requirements of 37 CFR § 1.192 (c)(7) (July 1, 2002) as amended at 62 Fed. Reg. 53169 (October 10, 1997), which was controlling at the time of Appellant's filing of the brief. 37 CFR § 1.192 (c)(7) states:

> *Grouping of claims.* For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

We will, thereby, consider Appellant's claims as standing or falling together in two groups based on the rejections, and we will treat:

Claim 1 as a representative claim of Group I (the 35 U.S.C. § 102 rejection); and

Claim 8 as a representative claim of Group II (the 35 U.S.C. § 103 rejection).

If the brief fails to meet either requirement, the Board is free to select a single claim from each group and to decide the appeal of that rejection based solely on the selected representative claim. ***In re McDaniel***, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002). ***See also In re Watts***, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004).

I. Whether the Rejection of Claims 1, 3, 7, 10-14, and 16-20 Under 35 U.S.C. § 102 is proper?

It is our view, after consideration of the record before us, that the disclosure of Will does fully meet the invention as recited in claims 1, 3, 7, 10-14, and 16-20. Accordingly, we affirm.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

To determine whether claim 1 is anticipated by the reference, we must first determine the scope of the claim. Appellant's specification shows a system at figure 2 for implementing the dynamic scroll device of the present invention.

Appellant argues that "dynamically" should be narrowly defined so as to not include the Will cursor speed control (brief at page 9).

Our reviewing court states in ***In re Zletz***, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) that "claims must be interpreted as broadly as their terms reasonably allow." Our reviewing court further states, "[t]he terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Texas Digital Sys. Inc v. Telegenix Inc.***, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002), ***cert. denied***, 538 U.S. 1058 (2003).

Upon our review of Appellant's specification, we fail to find any definition of the term "dynamically" that is different from the ordinary meaning. We find the ordinary meaning of the term "dynamically" is best found in the dictionary. We note that the definition most suitable for "dynamical" is "of or pertaining to energy, force, or motion in relation to force".[2] We further note that the definition most suitable for "-ly" is "in a specified manner".[3] Therefore, we find that the definition most suitable for "dynamically" is "in an energetic or forceful manner".

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[2] The American Heritage Dictionary, Second College Edition, 1982, page 432. Copy provided to Appellant.
[3] The American Heritage Dictionary, Second College Edition, 1982, page 748. Copy provided to Appellant.

We appreciate Appellant's position. However, Appellant has not argued any special definition for the term "dynamically" and we find that the claim language does not preclude reading on the Will cursor speed control.

With respect to independent claim 1, Appellant also argues at page 10 of the brief, "there is no single statement or teaching in Will that suggests simply 'counting' the received scroll events to determine cursor display rate of movement." Appellant also points out that "the present invention implements the consistency of movement in the same direction to decide fine/coarse changes." The Examiner responds at pages 10 and 11 of the answer that Will teaches monitoring the rate of thumbwheel movement and Will must count the amount of pulses during a given period of time if he is to determine the rate of thumbwheel movement.

We find Appellant's argument unpersuasive. Claim 1 is silent as to any limitations that require "consistency of movement" or "simply counting", as argued by Appellant. We find that Will teaches the claimed invention and more as pointed out by the Examiner.

Therefore, we will sustain the Examiner's rejection under 35 U.S.C. § 102.

II. Whether the Rejection of Claims 8 and 15 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have

suggested to one of ordinary skill in the art the invention as set forth in claims 8 and 15. Accordingly, we affirm.

With respect to dependent claim 8, Appellant refers back to the arguments present above with respect to claim 1. We find those arguments to be unpersuasive as discussed above.

Therefore, we will sustain the Examiner's rejection under 35 U.S.C. § 103.

Conclusion

In view of the foregoing discussion, we have sustained the rejection under 35 U.S.C. § 102 of claims 1, 3, 7, 10-14, and 16-20, and we have sustained the rejection under 35 U.S.C. § 103 of claims 8 and 15.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)
) BOARD OF PATENT
HOWARD B. BLANKENSHIP) APPEALS AND
Administrative Patent Judge) INTERFERENCES
)
)
ALLEN R. MACDONALD)
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Notice of References Cited	Application/Control No. 09/607,801	Applicant(s)/Patent Under Reexamination	
	Examiner	Art Unit 2600	Page 1 of 1

U.S. PATENT DOCUMENTS

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NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	The American Heritage Dictionary, Second College Edition, 1982, page 432.
	V	The American Heritage Dictionary, Second College Edition, 1982, page 748.
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
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